

The logo for the New York City Bar, featuring the text "NEW YORK CITY BAR" in a bold, serif font, centered between two horizontal blue bars.

NEW YORK
CITY BAR

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December 19, 2012

His Excellency Yoweri Museveni
President of Uganda
State House Nakasero
P.O. Box 24594
Kampala, Uganda

Dear President Museveni:

I write on behalf of the Association of the Bar of the City of New York (the “Association”) to express the Association’s opposition to the Anti-Homosexuality Bill of 2012 (the “Bill”) that was tabled by Member of Parliament David Bahati last November.¹ The Bill is reportedly almost identical to an earlier version of the Bill that was introduced in Parliament on October 14, 2009. We expressed our deep concerns about the prior version of the Bill in our letter to you of February 16, 2010, which is attached for your reference. As set forth in our earlier letter, we believe that the Bill threatens the fundamental rights and freedoms of individuals who are lesbian, gay, bisexual and transgender (“LGBT”) and Ugandan organizations that support LGBT rights.

The Association abhors discrimination against LGBT people, their exclusion from full and equal participation in Uganda’s democracy, the criminalization of homosexuality and organizations that support LGBT rights, and the harsh penalties contemplated by the law (reportedly, up to and including the death penalty).

As set forth in our previous letter, the Association believes that the Bill violates the Constitution of the Republic of Uganda and the Government’s obligations under the International Covenant on Civil and Political Rights and the African Charter on Human and Peoples’ Rights. Passage of the Bill would undermine the rule of law in Uganda by ignoring the country’s pre-existing legal obligations, which it is duty-bound to uphold.

¹ See BBC NEWS, *Uganda to pass anti-gay law as ‘Christmas gift’* (Nov.14, 2012), available at <http://www.bbc.co.uk/news/world-africa-20463887>.

We therefore again call upon your Government to promptly oppose the passage of the Bill and if passed, we urge you not to sign it.

Respectfully submitted,



Carey R. Dunne

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February 16, 2010

His Excellency Yoweri Museveni
President of Uganda
State House Nakasero
P.O. Box 24594
Kampala, Uganda

Dear President Museveni:

I write on behalf of the Association of the Bar of the City of New York (the "Association") to express our opposition to the Anti-Homosexuality Bill introduced on October 14, 2009 in Uganda's parliament (the "Bill"), which, in the Association's view, threatens the fundamental rights and freedoms of individuals who are lesbian, gay, bisexual and transgender ("LGBT") and Ugandan organizations that support LGBT rights.

The Association is an independent non-governmental organization with more than 23,000 members in over fifty countries. The Association has a long history of dedication to human rights, most notably through its Committee on International Human Rights, which investigates and reports on human rights conditions around the world. The Association's Committee on African Affairs monitors and responds to legal and policy developments in Africa. The Association's Committee on Lesbian, Gay, Bisexual and Transgender Rights addresses legal and policy issues as well as employment rules and procedures in legal institutions and in the court system affecting lesbians, gay men, bisexuals and transgender individuals. Similarly, the Committee on Sex and Law addresses issues relating to the effect of the factor of gender in the formulation and operation of law and social policy. Additionally, broad-based international affairs and legal issues are monitored and reported on by both the Council on International Affairs and the International Law Committee. Each of these committees has expressed strong concern about the pending Bill.

Among the most troubling aspects of the Bill is its endorsement of the death sentence for individuals found guilty of "aggravated homosexuality," broadly defined to include, among other acts, same-sex relations with an individual who is under 18 years old or who has a disability, where the accused is a person living with HIV (regardless of whether or not the accused is aware of his or her status), or where the accused has been previously convicted of the "offense of homosexuality."ⁱ The Association is also deeply concerned about the other harsh criminal penalties contemplated by the Bill, which include life imprisonment for engaging in same-sex activity and up to seven years imprisonment for the "promotion of homosexuality," which includes an individual, business or non-governmental organization's provision of funds, services or access to premises for LGBT people.ⁱⁱ

The Association joins other civil society organizations (CSOs), including Human Rights Watch and Amnesty International, in expressing alarm that the Bill, if enacted, would impermissibly discriminate against LGBT individuals, who already suffer extreme marginalization in Uganda, as well as violate freedom of expression and freedom of association for the individuals and CSOs that promote LGBT rights and offer HIV and AIDS services to the LGBT community.ⁱⁱⁱ

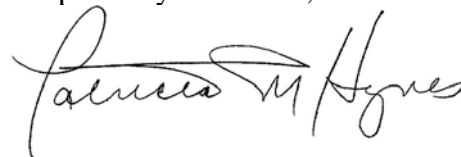
Moreover, the Association is concerned that the enforcement of the proposed legislation would infringe on the right to privacy of those charged with an offense under the law. While the Bill prohibits the media from publishing the “names and personal circumstances or any other information tending to establish the victim’s identity” without the permission of a court, it establishes no protection for the identity of the accused. Human rights organizations have widely documented the abuse, harassment and torture of LGBT individuals in Uganda. The Association fears that the law could be used to probe into the private lives of people who are gay or merely perceived to be gay, as well as to expose the accused to physical and psychological harm. It is the Association’s firm belief that, subject to time-tested limitations such as polygamy and incest, all adults, regardless of their sexual orientation, should enjoy the right to express their affections in private without state interference.

The Association believes that the Bill violates Uganda’s obligations under international and regional law, as well as Articles 21, 22, 24, 27 and 29 of the Constitution of the Republic of Uganda (the “Ugandan Constitution”). Uganda has ratified and is legally bound to implement, among other key human rights treaties, the International Covenant on Civil and Political Rights (ICCPR) and the African Charter on Human and Peoples’ Rights (ACHPR). Notably, the ICCPR, ACHPR and Ugandan Constitution enshrine the principles of non-discrimination and equal protection of the law, as well as protection of the right to life, freedom from torture and cruel, inhuman or degrading treatment or punishment, freedom of expression, and freedom of association. Furthermore, the ICCPR and Ugandan Constitution protect the right to privacy.^{iv}

While the Bill purports to nullify “any international legal instrument whose provisions are contradictory to the spirit and provisions enshrined in [the] Act,” such nullification contradicts the customary international law of treaties, codified by the Vienna Convention on the Law of Treaties, which provides that “every treaty in force is binding upon the parties to it and must be performed by them in good faith,” and that “a party may not invoke the provisions of its internal law as justification for its failure to perform a treaty.”^v Those provisions of the Vienna Convention have long been enshrined in customary international law and are legally binding on the Government of Uganda. The Association submits that the Bill is clearly illegal under international law applicable to the Government of Uganda, and therefore the Bill is legally required to be rejected by the Government.

The Association abhors the criminalization of homosexuality, the draconian penalties contemplated by the Bill, and the exclusion of LGBT people from full and equal participation in Uganda’s democracy. For this reason, we call upon the Government of Uganda to immediately oppose the Bill. We will also ask President Obama and the U.S. Government to continue to forcefully condemn the criminalization of homosexuality in Uganda.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Patricia M. Hynes". The signature is fluid and cursive, with a large initial "P" and "H".

Patricia M. Hynes

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- i See A Bill for an Act Entitled Anti-Homosexuality Act, 2009, Part II (“Homosexuality and Related Practices”), Section 3 (“Aggravated Homosexuality”). The official version of the Bill is not publicly available on the Parliament of the Republic of Uganda’s web site. The Association has relied on an unofficial version of the Bill in preparing this letter.
- ii See A Bill for an Act Entitled Anti-Homosexuality Act, 2009, Part II (“Homosexuality and Related Practices”), Section 2 (“The Offense of Homosexuality”) and Section 13 (“Promotion of Homosexuality”).
- iii See Human Rights Watch, *Uganda: “Anti-Homosexuality” Bill Threatens Liberties and Human Rights Defenders* (Oct. 15, 2009), available at <http://www.hrw.org/en/news/2009/10/15/uganda-anti-homosexuality-bill-threatens-liberties-and-human-rights-defenders>. Human Rights Watch’s statement in opposition to the Bill was endorsed by seventeen human rights organizations, including groups from Africa, Europe, and the United States.
- iv The principle of non-discrimination is found in Article 2(1) of the ICCPR, Article 2 of the ACHPR, and Article 21 of the Ugandan Constitution. Equal protection of the law is guaranteed by Article 26 of the ICCPR, Article 3(2) of the ACHPR, and Article 21 of the Ugandan Constitution. The right to life is enshrined in Article 6(1) of the ICCPR, Article 4 of the ACHPR, and Article 22 of the Ugandan Constitution. Freedom from torture and from other cruel, inhuman or degrading treatment or punishment is protected by Article 7 of the ICCPR, Article 5 of the ACHPR, and Article 24 of the Ugandan Constitution. Freedom of expression and freedom of association are guaranteed by Articles 19 and 22 of the ICCPR, Articles 9 and 10 of the ACHPR, and Article 29 of the Ugandan Constitution. The right to privacy is found in Article 17 of the ICCPR and Article 27 of the Ugandan Constitution.
- v See A Bill for an Act Entitled Anti-Homosexuality Act, 2009, Part V (“Miscellaneous”), Section 18 (“Nullification of Inconsistent International Treaties, Protocols, Declarations and Conventions.”) The Vienna Convention on the Law of Treaties is widely accepted to represent a codification of the international customary law of treaty interpretation. See Articles 26 and 27 of the Vienna Convention on the Law of Treaties, adopted 23 May 1969, entered into force 27 January 1980, U.N. Doc. A/Conf.39/27, available at http://untreaty.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf.